IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.23627 of 2007

1. UDAY NARAYAN BAIDYA
2. Ram Dahin Das
3. Lakshmi Devi
4. Raj Kumar

… Petitioners

Versus

1. STATE OF BIHAR
2. Arvind Kumar

… Opp. Parties

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4 20.10.2008 Heard Mr. Nand Lal Kr. Singh, learned counsel for the petitioners as also Mr. Jharkhandi Upadhaya, learned A.P.P. for the State. Although O.P. No. 2, the informant, has appeared by filing vakalatnama yet none is present on his behalf at the time of hearing of this application.

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The grievance of the petitioners is against order dated 29.3.2007 passed by the learned Sub Divisional Judicial Magistrate, Jehanabad, in Makhdumpur P.S. Case No. 59 of 2004 arising out of Complaint Case No. 743 of 2003.

It has been submitted by the learned counsel for the petitioners that the learned court below without considering the submissions raised by the petitioners of the case being civil in nature has dismissed their petition for discharge under section 227 Cr.P.C. only on the ground that cognizance had been taken, charge sheet was submitted and there was sufficient materials in the case diary for framing of charge.

I have perused the impugned order and the recital in the complaint which forms the basis of police case.

The learned Magistrate without discussing or considering the

submissions advanced by the learned counsel for the petitioners has dismissed the discharge petition of the petitioners only because charge sheet had been submitted and materials were in abundance for framing charge without stating what such materials were.

In that view of the matter the impugned order dated 29.3.2007 passed by the Sub Divisional Judicial Magistrate, Jehanabad, is hereby set aside and the matter is remitted back to him for considering afresh the petition under section 227 Cr.P.C. filed by the petitioners.

Spd/- **(Abhijit Sinha, J.)**

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